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11 Attorneys for Defendant  
12 COSTCO WHOLESALE CORPORATION

13  
14 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
15  
16 COUNTY OF SAN DIEGO

17  
18 R & R SAILS, INC. dba HOBIE CAT  
19 COMPANY,

20 Plaintiff,

21 v.

22 PREMIER INCENTIVE GROUP, LLC;  
23 COSTCO WHOLESALE  
24 CORPORATION; and DOES 1-100,  
25 Inclusive,

26 Defendants.

27 Case No. 37-2011-00053159-CU-BT-NC

28 [Assigned to Hon. Earl H. Maas, III]

REPLY BRIEF IN SUPPORT OF  
DEMURRERS OF DEFENDANT  
COSTCO WHOLESALE  
CORPORATION TO PLAINTIFF'S  
FIRST AMENDED COMPLAINT

Date: July 1, 2011

Time: 1:30 p.m.

Dept. 28

Action Filing Date: April 11, 2011

20 Defendant Costco Wholesale Corporation has demurred to Plaintiff's four causes of action  
21 for: (1) unfair competition; (2) intentional interference with contractual relations; (3) negligent  
22 interference with economic relations; and (4) unjust enrichment. Plaintiff's four causes of action  
23 consist of four different attempts to claim that Costco has acted unlawfully by re-selling  
24 Plaintiff's kayaks, which Plaintiff originally sold to Defendant Premier.

25 As shown in the moving papers, and not challenged in the opposition, the purchase and re-  
26 sale of a manufacturer's goods by an unauthorized retailer, without more, is simply not  
27 actionable. The fact that the manufacturer may have specifically declined to authorize sales by  
28 that retailer makes no difference. As set forth more fully in Costco's demurrer,  
71825-00239/1783903.3

REPLY RE DEMURRERS OF COSTCO TO  
PLAINTIFF'S FIRST AMENDED COMPLAINT

EXHIBIT 16  
PAGE 176

1                   Once the manufacturer has sold its goods to a distributor, the  
 2                   manufacturer can have no control over the retailers to whom the  
 3                   distributor resells the goods. If the manufacturer wishes to retain  
 4                   this control, it can best do so by means of its contract with its  
 5                   distributors.

6                   *Citizens of Humanity v. Costco Wholesale Corp.* (2009) 171 Cal.App.4th 1, 10.

7                   Despite this clear law, the premise of each of Plaintiff's legal theories is that Costco is  
 8                   doing something wrong simply because Plaintiff does not want Costco to sell its merchandise.  
 9                   None of Plaintiff's causes of action is adequately pled, nor may any of them be remedied by a  
 10                  further amendment.

11

12                   First Cause of Action for Unfair Competition

13                   In order to state a claim for unfair competition, Plaintiff must plead with specificity the  
 14                   "particular section of the statutory scheme which was violated" and describe with "reasonable  
 15                   particularity the facts supporting violation." *Khoury v. Maly's of California, Inc.* (1993) 14  
 16                  Cal.App.4th 612, 619. Plaintiff has not done so and cannot do so. Instead, Plaintiff has attempted  
 17                  unconvincingly to argue that *Khoury* is not good law. Plaintiff is simply wrong.

18                   In its attempt to discredit *Khoury*, Plaintiff cites *Quelimane Co. v. Stewart Title Guaranty*  
 19                  *Co.* (1998) 19 Cal. 4th 26, 47. *Quelimane* addresses an entirely different issue. It holds that the  
 20                  rule requiring fraud to be pled with specificity does not apply to UCL claims. *Quelimane* does  
 21                  not address, and has nothing to do with, the rule requiring that the statute be identified and the  
 22                  violation to be described. There, the complaint alleged as wrongful conduct that the title  
 23                  insurance company represented that it would issue insurance on any property with good title,  
 24                  when it in fact would not issue based on tax deeds. The Court held that this alleged violations of  
 25                  two specifically identified statutes—the Cartwright Act, Business and Professions Code section  
 26                  16720, and the false advertising statute, Business and Professions Code Section 17500—and  
 27                  therefore stated a cause of action under the UCL.

1 To allow a UCL claim to proceed without reference to a specific statute would not only be  
 2 contrary to law, it would be enormously unfair to the defendant. The UCL is broad enough  
 3 already without forcing a party to guess at what he or she is alleged to have done wrong.  
 4 Moreover, without the statute being identified in the pleading, the defendant cannot challenge the  
 5 sufficiency of the allegations. E.g. *California Consumer Health Care Council v. Kaiser*  
 6 *Foundation Health* (2006) 142 Cal.App.4th 21 (demurrer sustained to UCL claim where the  
 7 complaint failed to allege violation of predicate statute).

8 Plaintiff here contends that the basis for its UCL claim is that “Costco circumvented  
 9 Hobie Cat and used its buyers (and buyers from Premier Incentive Group) to obtain Hobie Cat’s  
 10 products for resale” and that “such conduct is unlawful in that it is an intentional interference with  
 11 the current and future business relationships between Hobie Cat and its authorized dealers and  
 12 consumers.” (Oppo. at p. 3.) But as set forth above, Costco’s resale of Hobie Cat merchandise is  
 13 lawful and not actionable.

14 To the extent the supposedly “unlawful” act consists of interference with contractual  
 15 relations, not of the violation of a specific statute, it cannot support a claim for violation of  
 16 section 17200 even if plaintiff could establish interference. A common law violation (such as  
 17 breach of contract, breach of the implied covenant or tortious interference) is insufficient to  
 18 establish a UCL claim. *Textron Financial Corp. v. National Union Fire Ins. Co. of Pittsburgh*  
 19 (2004) 118 Cal.App.4th 1061, 1072 (“reliance on general common law principles to support a  
 20 cause of action for unfair competition is unavailing”); *see also Shroyer v. New Cingular Wireless*  
 21 *Servcs.* (9th Cir. 2010) 622 F.3d 1035, 1043-1044 (a common law violation such as breach of  
 22 contract is insufficient to state a claim under the unlawful prong of § 17200).

23 Plaintiff seems to believe that it can plead a UCL violation merely by saying a party acted  
 24 unfairly, even if its conduct was in compliance with law. There is no support in the law for this  
 25 belief.

26 Second Cause of Action for Intentional Interference With Contractual Relations

27 In order to state a claim for interference with contractual relations, Plaintiff is required to

1       allege "the existence of a valid contract between plaintiff and a third party." *Quelimane*, 19  
 2       Cal.4th at 56 (emphasis added). Instead, Plaintiff has simply alleged that "there existed a  
 3       contractual relationship between the Plaintiff and its sales representatives and dealers, which  
 4       afforded, and continues to afford, contractual rights and a future expectancy of ongoing and  
 5       continuing sales and business." (FAC, ¶ 25, emphasis added.) Nowhere does Plaintiff allege the  
 6       existence of any specific contract, the parties to any such contract, the terms of the contract, or  
 7       what rights it afforded the parties. While Plaintiff refers to its "complex network of sales  
 8       representatives and dealers," and that they are conferred with "certain exclusive rights," Plaintiff  
 9       fails to allege that those rights are provided to any particular party or parties by any particular  
 10      contract or contracts. This is similar to the discredited, interference with the market theory,  
 11      rejected in the context of the related tort of interference with prospective business advantage in  
 12      *Westside Center Associates v. Safeway Stores* 23 (1996) 42 Cal. App. 4th 507.

13       What's more, Plaintiff utterly fails to explain how any aspect of its alleged contractual  
 14      relationship was disrupted by Costco's sale of Hobie Cat kayaks to its members. There is no  
 15      allegation that any such contract was breached or otherwise disrupted. To the extent the Hobie  
 16      Cat kayaks Costco purchased sold to its members could otherwise have been sold by Plaintiff's  
 17      distributors, Plaintiff itself eliminated that possibility when it sold the kayaks to Premier.  
 18      Manufacturers typically sell their merchandise to many distributors or retailers. The fact that they  
 19      sell to one retailer is not a breach, or disruption, of a contract with another retailer. That is not  
 20      interference. It is competition. Plaintiff therefore cannot allege that Costco disrupted Plaintiff's  
 21      relationships, and Plaintiff's second cause of action fails.

22  
 23       Third Cause of Action for Negligent Interference With Economic Relations

24       Plaintiff's third cause of action fails because Plaintiff has not alleged an independently  
 25      wrongful act. Plaintiff contends that it satisfied this prong because, "Hobie Cat pled Costco knew  
 26      of the business relationships between Hobie Cat and its dealers and sales representative [sic] and  
 27      should have known its conduct in obtaining and reselling Hobie Cat products at a price below that  
 28      of Hobie Cat's authorized dealers would harm such relationships." (Oppo. at p. 6.) But a  
 71825-00239/1783903.3

1 plaintiff alleging interference with prospective economic relations must allege conduct that was  
 2 wrongful by some legal measure other than the fact of the interference itself." *Contemporary*  
 3 *Services Corp. v. Staff Pro Inc.* (2007) 152 Cal.App.4th 1043,1060 (emphasis added); *Korea*  
 4 *Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134, 1153–1154. Here, the alleged  
 5 wrongful act is simply the alleged interference itself, and is insufficient to state a claim.

6 Plaintiff cannot point to any authority for the proposition that selling merchandise to  
 7 consumers at a lower price than competitors is tortious or actionable. Nor does it explain how  
 8 this is interference any more than if one retailer placed an ad in the newspaper and attracted a  
 9 customer who might otherwise have purchased from someone else.

10 Moreover, Plaintiff cannot point to a specific, prospective relationship with which Costco  
 11 interfered, and general "interference with the market" is not actionable. *Westside Center, supra.*  
 12

13 Fourth Cause of Action for Unjust Enrichment

14 Plaintiff's fourth and final cause of action for unjust enrichment is another attempt at  
 15 bootstrapping. Citing *People ex rel Kennedy v. Beaumont Inv., Ltd.* (2003) 111 Cal.App.4th 102,  
 16 Plaintiff contends that, "unjust enrichment is available in many circumstances and may be used to  
 17 redress statutory violations" and that "the UCL specifically authorizes recovery under an unjust  
 18 enrichment theory."

19 Plaintiff's argument proves Costco's point—unjust enrichment is not a separate and  
 20 independent cause of action, but rather another way to describe the remedy of restitution.  
 21 *Beaumont Inv.* did not even contain a cause of action for unjust enrichment, so it cannot be  
 22 authority for the proposition that Plaintiff can plead such a cause of action. Rather, it contained a  
 23 single cause of action alleging unfair business practices based on the predicate act of violation of  
 24 a municipal rent control ordinance.

25     ///

26     ///

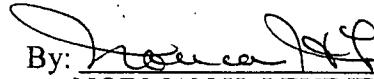
27     ///

28 71825-00239/1783903.3

1 For all the foregoing reasons and those set forth in Costco's demurrsers and accompanying  
2 memorandum, Defendant Costco respectfully requests that the Court sustain the demurrsers.  
3

4 DATED: June 24, 2011

5  
6 GREENBERG GLUSKER FIELDS CLAMAN  
7 & MACHTINGER LLP  
8

9 By: 

10 NORMAN H. LEVINE  
11 Attorneys for Defendant Costco Wholesale  
12 Corporation  
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GREENBERG GLUSKER FIELDS CLAMAN  
& MACHTINGER LLP  
1900 Avenue of the Stars, 21st Floor  
Los Angeles, California 90067-4590

71825-00239/1783903.3

**PROOF OF SERVICE**  
CCP §1011, CCP §1013a(3)

**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

I am employed in the county of Los Angeles, State of California.

I am over the age of 18 and not a party to the within action; my business address is 1900 Avenue of the Stars, Suite 2100, Los Angeles, California 90067-4590.

On June 24, 2011, I served the foregoing document described as **REPLY BRIEF IN SUPPORT OF DEMURRERS OF DEFENDANT COSTCO WHOLESALE CORPORATION TO PLAINTIFF'S FIRST AMENDED COMPLAINT** on the interested parties in this action

by placing  the original  a true and correct copy thereof enclosed in sealed envelopes addressed as follows:

Steven J. Cologne, Esq.  
Robert J. Fitzpatrick, Esq.  
HIGGS, Fletcher & Mack LLP  
401 West "A" Street, Suite 2600  
San Diego, CA 92101-7913

Attorneys for Plaintiff  
R & R Sails, Inc. dba Hobie Cat  
Company

Richard L. Mann, Esq.  
EZRA BRUTZKUS GUBNER LLP  
21650 Oxnard Street, Suite 500  
Woodland Hills, CA 91367

Attorneys for Defendant Premier Incentive Group, LLC

BY REGULAR U.S. MAIL:

As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

AND BY E-MAIL:

A true and correct copy of the document set forth above was sent via e-mail to Steven J. Cologne, Esq. at [scologne@higgslaw.com](mailto:scologne@higgslaw.com) and to Robert J. Fitzpatrick, Esq. at [fitzpatrickr@higgslaw.com](mailto:fitzpatrickr@higgslaw.com), attorneys for plaintiffs, and to Richard L. Mann, Esq. at [rmann@ebg-law.com](mailto:rmann@ebg-law.com), attorney for Defendant Premier Incentive Group, LLC.

Executed on June 24, 2011, at Los Angeles, California.

(State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

NANCY L. LUIS

Nancy A. Ains  
SIGNATURE

EXHIBIT 16  
PAGE 182



**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF SAN DIEGO  
NORTH COUNTY**

**MINUTE ORDER**

DATE: 07/01/2011

TIME: 01:30:00 PM

DEPT: N-28

JUDICIAL OFFICER PRESIDING: Earl H. Maas, III

CLERK: Noreen McKinley

REPORTER/ERM: SueAnn Toney CSR# 10092

BAILIFF/COURT ATTENDANT:

CASE NO: 37-2011-00053159-CU-BT-NC CASE INIT.DATE: 04/07/2011

CASE TITLE: R & R Sails, Inc vs. Premier Incentive Group, LLC

CASE CATEGORY: Civil - Unlimited CASE TYPE: Business Tort

---

EVENT TYPE: Demurrer / Motion to Strike

---

**APPEARANCES**

Robert Fitzpatrick, specially appearing for counsel Steven J Cologne, present for Plaintiff(s).  
Norman Levine, specially appearing for Costco Corporation, self represented Defendant.

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The Court hears oral argument and confirms the tentative ruling as follows:

Defendant Costco Wholesale Corporation's general demurrer to Plaintiff's second cause of action for intentional interference with contractual relations and third cause of action for negligent interference with economic relations is overruled. Defendant demurs to these causes of action on the ground that Plaintiff has failed to plead that it knew of a contractual or economic relationship between Plaintiff and Defendant Premier. However, these causes of action are based on Plaintiff's allegation that Defendant interfered with contracts or economic relationships between Plaintiff and its sales representatives and dealers, not with contracts or economic relationships between Plaintiff and Premier. (FAC, ¶¶ 25, 31.) Defendant does not address the relationships actually alleged by Plaintiff. Its demurrer cannot be sustained on the ground raised.

Defendant's general demurrer to Plaintiff's first cause of action for unfair business practices is overruled. Defendant argues that there is nothing illegal about acquiring merchandise from a seller other than the manufacturer and thus Plaintiff cannot sustain a claim for unfair business practices. However, Plaintiff alleges that Defendant intentionally interfered with contractual relations and negligently interfered with economic relations. As explained above, Defendant's demurrer to those causes of action must be overruled. As such, Plaintiff has sufficiently pled that Defendant engaged in unfair business practices.

Defendant's general demurrer to Plaintiff's fourth cause of action for unjust enrichment is sustained without leave to amend. "[T]here is no cause of action in California for unjust enrichment. Unjust enrichment is synonymous with restitution. There are several potential bases for a cause of action seeking restitution. For example, restitution may be awarded in lieu of breach of contract damages when the parties had an express contract, but it was procured by fraud or is unenforceable or ineffective for some reason. Alternatively, restitution may be awarded where the defendant obtained a benefit from the

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DATE: 07/01/2011

MINUTE ORDER

DEPT: N-28

Page 1

Calendar No.



CASE TITLE: R & R Sails, Inc vs. Premier Incentive  
Group, LLC

CASE NO: 37-2011-00053159-CU-BT-NC

plaintiff by fraud, duress, conversion, or similar conduct." (*Durell v. Sharp Healthcare* (2010) 183 Cal.App.4th 1350, 1370.) Plaintiff here attempts to state a separate cause of action for unjust enrichment and argues that restitution is an available remedy for violations of unfair competition laws. However, while restitution may be an available remedy – and, in fact, Plaintiff seeks such a remedy in its complaint – it is not a cause of action.

Defendant shall file and serve its answer to the first amended complaint within 10 days of the date of this ruling.

Both parties waive notice.

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DATE: 07/01/2011  
DEPT: N-28

MINUTE ORDER

EXHIBIT 17  
PAGE 184

Page 2  
Calendar No.

Recycled Paper  
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11 JUL -5 PM 2:45

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SAN DIEGO COUNTY, CA

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11 Attorneys for Defendant  
12 COSTCO WHOLESALE CORPORATION

13  
14 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
15 COUNTY OF SAN DIEGO

**FAXED**

16 R & R SAILS, INC. dba HOBIE CAT  
17 COMPANY,

18 Plaintiff,

19 v.

20 PREMIER INCENTIVE GROUP, LLC;  
21 COSTCO WHOLESALE  
22 CORPORATION; and DOES 1-100,  
23 Inclusive,

24 Defendants.

25 Case No. 37-2011-00053159-CU-BT-NC

26 [Assigned to Hon. Earl H. Maas, III]

27 NOTICE OF RULING RE DEFENDANT  
28 COSTCO WHOLESALE  
CORPORATION'S DEMURRERS TO  
PLAINTIFF'S FIRST AMENDED  
COMPLAINT

29 Action Filing Date: April 11, 2011

30 TO ALL THE PARTIES AND THEIR ATTORNEYS OF RECORD:

31 PLEASE TAKE NOTICE that the Demurrsers of Defendant Costco Wholesale  
32 Corporation to Plaintiff's First Amended Complaint came on regularly for hearing before the  
33 Court, the Hon. Earl H. Maas III, Judge Presiding, in Department N-28 thereof, on July 1, 2011.  
34 Plaintiff was represented by its attorneys of record, Higgs, Fletcher & Mack LLP, by Robert J.  
35 Fitzpatrick. Defendant Costco Wholesale Corporation was represented by its attorneys of record,  
36 Greenberg Glusker Fields Claman & Machtiner LLP by Norman H. Levine. There was no  
37 appearance on behalf of Defendant Premier Incentive Group.  
38 71825-00239/1785481.1

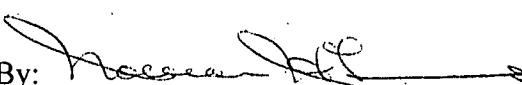
**EXHIBIT 18**  
**PAGE 185**

39 NOTICE OF RULING RE DEFENDANT COSTCO WHOLESALE CORPORATION'S  
40 DEMURRERS TO PLAINTIFF'S FIRST AMENDED COMPLAINT

1        The Court, after hearing argument, adopted the attached Tentative Ruling as the Order of  
2 the Court, overruling the demurrers to the First, Second and Third Causes of Action, sustaining  
3 the demurrers to the Fourth Cause of Action without leave to amend, and ordering defendant to  
4 file an answer to the First Amended Complaint within ten days.

5        DATED: July 5, 2011

6        GREENBERG GLUSKER FIELDS CLAMAN  
7 & MACHTINGER LLP

8        By:   
9        NORMAN H. LEVINE  
10      Attorneys for Defendant COSTCO  
11      WHOLESALE CORPORATION

12      GREENBERG GLUSKER FIELDS CLAMAN  
13      & MACHTINGER LLP  
14      1900 Avenue of the Stars, 21st Floor  
15      Los Angeles, California 90067-4590

27  
28

71825-00239/1785481.1

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EXHIBIT 18  
PAGE 786

NOTICE OF RULING RE DEFENDANT COSTCO WHOLESALE CORPORATION'S  
DEMURRERS TO PLAINTIFF'S FIRST AMENDED COMPLAINT

SUPERIOR COURT OF CALIFORNIA,

COUNTY OF SAN DIEGO

SOUTH BUILDING

TENTATIVE RULINGS - June 28, 2011

EVENT DATE: 07/01/2011

EVENT TIME: 01:30:00 PM

DEPT.: N-28

JUDICIAL OFFICER: Earl H. Maas III

CASE NO.: 37-2011-00053159-CU-BT-NC

CASE TITLE: R & R SAILS, INC VS. PREMIER INCENTIVE GROUP, LLC

CASE CATEGORY: Civil - Unlimited

CASE TYPE: Business Tort

EVENT TYPE: Demurrer / Motion to Strike

CAUSAL DOCUMENT/DATE FILED:

Defendant Costco Wholesale Corporation's general demurrer to Plaintiff's second cause of action for intentional interference with contractual relations and third cause of action for negligent interference with economic relations is overruled. Defendant demurs to these causes of action on the ground that Plaintiff has failed to plead that it knew of a contractual or economic relationship between Plaintiff and Defendant Premier. However, these causes of action are based on Plaintiff's allegation that Defendant interfered with contracts or economic relationships between Plaintiff and its sales representatives and dealers, not with contracts or economic relationships between Plaintiff and Premier. (FAC, ¶¶ 25, 31.) Defendant does not address the relationships actually alleged by Plaintiff. Its demurrer cannot be sustained on the ground raised.

Defendant's general demurrer to Plaintiff's first cause of action for unfair business practices is overruled. Defendant argues that there is nothing illegal about acquiring merchandise from a seller other than the manufacturer and thus Plaintiff cannot sustain a claim for unfair business practices. However, Plaintiff alleges that Defendant intentionally interfered with contractual relations and negligently interfered with economic relations. As explained above, Defendant's demurrer to those causes of action must be overruled. As such, Plaintiff has sufficiently pled that Defendant engaged in unfair business practices.

Defendant's general demurrer to Plaintiff's fourth cause of action for unjust enrichment is sustained without leave to amend. "[T]here is no cause of action in California for unjust enrichment. Unjust enrichment is synonymous with restitution. There are several potential bases for a cause of action seeking restitution. For example, restitution may be awarded in lieu of breach of contract damages when the parties had an express contract, but it was procured by fraud or is unenforceable or ineffective for some reason. Alternatively, restitution may be awarded where the defendant obtained a benefit from the plaintiff by fraud, duress, conversion, or similar conduct." (*Durell v. Sharp Healthcare* (2010) 183 Cal.App.4th 1350, 1370.) Plaintiff here attempts to state a separate cause of action for unjust enrichment and argues that restitution is an available remedy for violations of unfair competition laws. However, while restitution may be an available remedy – and, in fact, Plaintiff seeks such a remedy in its complaint – it is not a cause of action.

Defendant shall file and serve its answer to the first amended complaint within 10 days of the date of this ruling.

Event ID: 864120

TENTATIVE RULINGS

Page: 1

Calendar No.:

EXHIBIT 18  
PAGE 187

**PROOF OF SERVICE**  
CCP §1011, CCP §1013a(3)

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the county of Los Angeles, State of California.

I am over the age of 18 and not a party to the within action; my business address is 1900 Avenue of the Stars, Suite 2100, Los Angeles, California 90067-4590.

On July 5, 2011, I served the foregoing document described as **NOTICE OF RULING RE DEFENDANT COSTCO WHOLESALE CORPORATION'S DEMURRERS TO PLAINTIFF'S FIRST AMENDED COMPLAINT** on the interested parties in this action

by placing  the original  a true and correct copy thereof enclosed in sealed envelopes addressed as follows:

Steven J. Cologne, Esq.  
Robert J. Fitzpatrick, Esq.  
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Attorneys for Plaintiff  
R & R Sails, Inc. dba Hobie Cat  
Company

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EZRA BRUTZKUS GUBNER LLP  
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Attorneys for Defendant Premier Incentive Group, LLC

BY REGULAR U.S. MAIL:

☒ As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

AND BY E-MAIL:

□ A true and correct copy of the document set forth above was sent via e-mail to Steven J. Cologne, Esq. at [scologne@higgslaw.com](mailto:scologne@higgslaw.com) and to Robert J. Fitzpatrick, Esq. at [fitzpatrickr@higgslaw.com](mailto:fitzpatrickr@higgslaw.com), attorneys for plaintiffs, and to Richard L. Mann, Esq. at [rmann@ebg-law.com](mailto:rmann@ebg-law.com), attorney for Defendant Premier Incentive Group, LLC.

Executed on July 5, 2011, at Los Angeles, California.

(State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

NANCY L. LUIS

Nancy L. Obris  
SIGNATURE

**SIGNATURE**





1 NORMAN H. LEVINE (SBN 061884)  
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3 RACHEL WILKES (SBN 240642)  
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10 Fax: 310.553.0687

11 Attorneys for Defendant  
12 COSTCO WHOLESALE CORPORATION

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 COUNTY OF SAN DIEGO

**FAXED**

15 R & R SAILS, INC. dba HOBIE CAT  
16 COMPANY,

17 Plaintiff,

18 v.

19 PREMIER INCENTIVE GROUP, LLC;  
20 COSTCO WHOLESALE  
21 CORPORATION; and DOES 1-100,  
22 Inclusive,

23 Defendants.

24 Case No. 37-2011-00053159-CU-BT-NC

25 [Assigned to Hon. Earl H. Maas, III]

26 **ANSWER OF DEFENDANT COSTCO  
27 WHOLESALE CORPORATION TO  
28 PLAINTIFF'S FIRST AMENDED  
COMPLAINT**

29 Action Filing Date: April 11, 2011

30 Defendant Costco Wholesale Corporation ("Costco"), for itself alone and for no other  
31 defendant, answers the First Amended Complaint of Plaintiff R & R Sails, Inc. dba Hobie Cat  
32 Company, as follows:

33  
34 1. Pursuant to §431.30(d) of the Code of Civil Procedure, Costco denies generally  
35 and specifically each and every allegation of the First, Second and Third Causes of Action of  
36 Plaintiff's First Amended Complaint, and specifically denies that Plaintiff had been damaged in  
37 any sum by reason of any act or omission of Plaintiff, or that Plaintiff is entitled to any relief  
38 against Costco.

39 71825-00239/1785480.1

40 ANSWER OF DEFENDANT COSTCO WHOLESALE CORPORATION  
41 TO PLAINTIFF'S FIRST AMENDED COMPLAINT

42 **EXHIBIT 19**  
43 **PAGE 789**

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12 COSTCO WHOLESALE CORPORATION

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 COUNTY OF SAN DIEGO

15 R & R SAILS, INC. dba HOBIE CAT  
16 COMPANY,

17 Plaintiff,

18 v.

19 PREMIER INCENTIVE GROUP, LLC;  
20 COSTCO WHOLESALE  
21 CORPORATION; and DOES 1-100,  
22 Inclusive,

23 Defendants.

24 Case No. 37-2011-00053159-CU-BT-NC

25 [Assigned to Hon. Earl H. Maas, III]

26 **ANSWER OF DEFENDANT COSTCO  
27 WHOLESALE CORPORATION TO  
28 PLAINTIFF'S FIRST AMENDED  
COMPLAINT**

29 Action Filing Date: April 11, 2011

30 Defendant Costco Wholesale Corporation ("Costco"), for itself alone and for no other  
31 defendant, answers the First Amended Complaint of Plaintiff R & R Sails, Inc. dba Hobie Cat  
32 Company, as follows:

33 1. Pursuant to §431.30(d) of the Code of Civil Procedure, Costco denies generally  
34 and specifically each and every allegation of the First, Second and Third Causes of Action of  
35 Plaintiff's First Amended Complaint, and specifically denies that Plaintiff had been damaged in  
36 any sum by reason of any act or omission of Plaintiff, or that Plaintiff is entitled to any relief  
37 against Costco.

38 71825-00239/1785480.1

39 **EXHIBIT 19**  
40 **PAGE 190**

2. Costco does not answer the Fourth Cause of Action, as a demurrer thereto was sustained without leave to amend on July 1, 2011, or the Fifth Cause of Action, which is not brought against Costco.

## **FIRST AFFIRMATIVE DEFENSE**

3. If Plaintiff has sustained damages, which answering defendant denies, plaintiff has failed to mitigate its damages.

## **SECOND AFFIRMATIVE DEFENSE**

4. The claims asserted in the First Amended Complaint are barred because Costco's conduct was privileged and justified.

### THIRD AFFIRMATIVE DEFENSE

5. The claims asserted in the First Amended Complaint are barred because plaintiff cannot identify any specific, valid contract or relationship with which Costco allegedly interfered.

#### FOURTH AFFIRMATIVE DEFENSE

6. The claims asserted in the First Amended Complaint are barred by waiver.

## **FIFTH AFFIRMATIVE DEFENSE**

7. The claims asserted in the First Amended Complaint are barred by estoppel.

## SIXTH AFFIRMATIVE DEFENSE

8. The claims asserted in the First Amended Complaint are barred by plaintiff's unclean hands.

## **SEVENTH AFFIRMATIVE DEFENSE**

9. The claims asserted in the First Amended Complaint are barred by the competition privilege.

## **EIGHTH AFFIRMATIVE DEFENSE**

10. Plaintiff lacks standing to assert the claim set forth in the First Cause of Action of the First Amended Complaint.

WHEREFORE, Defendant Costco Wholesale Corporation prays for judgment as follows:

1. That Plaintiff take nothing by its First Amended Complaint.
2. For costs of suit incurred herein.
3. For such other and further relief as the Court may deem just and proper.

DATED: July 8, 2011

GREENBERG GLUSKER FIELDS CLAMAN  
& MACHTINGER LLP

**NORMAN H. LEVINE  
Attorneys for Defendant COSTCO  
WHOLESALE CORPORATION**

**PROOF OF SERVICE**  
CCP §1011, CCP §1013a(3)

**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

I am employed in the county of Los Angeles, State of California.

I am over the age of 18 and not a party to the within action; my business address is 1900 Avenue of the Stars, Suite 2100, Los Angeles, California 90067-4590.

On July 8, 2011, I served the foregoing document described as **ANSWER OF DEFENDANT COSTCO WHOLESALE CORPORATION TO PLAINTIFF'S FIRST AMENDED COMPLAINT** on the interested parties in this action

by placing  the original  a true and correct copy thereof enclosed in sealed envelopes addressed as follows:

Steven J. Cologne, Esq.  
Robert J. Fitzpatrick, Esq.  
HIGGS, Fletcher & Mack LLP  
401 West "A" Street, Suite 2600  
San Diego, CA 92101-7913

Atorneys for Plaintiff  
R & R Sails, Inc. dba Hobie Cat  
Company

Richard L. Mann, Esq.  
EZRA BRUTZKUS GUBNER LLP  
21650 Oxnard Street, Suite 500  
Woodland Hills, CA 91367

Attorneys for Defendant Premier Incentive Group, LLC

BY REGULAR U.S. MAIL:

As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

AND BY E-MAIL:

A true and correct copy of the document set forth above was sent via e-mail to Steven J. Cologne, Esq. at [scologne@higgslaw.com](mailto:scologne@higgslaw.com) and to Robert J. Fitzpatrick, Esq. at [fitzpatrickr@higgslaw.com](mailto:fitzpatrickr@higgslaw.com), attorneys for plaintiffs, and to Richard L. Mann, Esq. at [rmann@ebg-law.com](mailto:rmann@ebg-law.com), attorney for Defendant Premier Incentive Group, LLC.

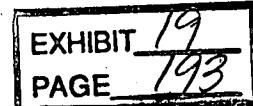
Executed on July 8, 2011, at Los Angeles, California

(State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

NANCY L. LUIS

Nancy A. Orris SIGNATURE

## SIGNATURE





**SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO**

STREET ADDRESS: 325 S. Melrose

MAILING ADDRESS: 325 S. Melrose

CITY AND ZIP CODE: Vista, CA 92081

BRANCH NAME: North County

TELEPHONE NUMBER: (760) 201-8028

**RECEIVED****AUG 12 2011****GGFCMK**

PLAINTIFF(S)/PETITIONER(S)/APPELLANT(S): R &amp; R Sails, Inc

DEFENDANT(S)/RESPONDENT(S): Premier Incentive Group, LLC et.al.

Short Title: R &amp; R Sails, Inc vs. Premier Incentive Group, LLC

**NOTICE OF HEARING**

CASE NUMBER:

37-2011-00053159-CU-BT-NC

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Notice is given that the above-entitled case has been set for the reason listed below and at the location shown above. All inquiries regarding this notice should be referred to the court listed above.

**TYPE OF HEARING**

Civil Case Management Conference

**DATE**

09/09/2011

**TIME**

10:00 am

**DEPT**

N-28

**JUDGE**

Earl H. Maas, III

Counsel: Check service list. If you have brought a party into this case who is not included in the service list, San Diego Superior Court Local Rules, Division II, requires you to serve the party with a copy of this notice.

A case management statement must be completed by counsel for all parties or parties in pro per and timely filed with the court at least 15 days prior to the initial case management conference. (San Diego Local Rules, Division II, CRC Rule 3.725).

All counsel of record or parties in pro per shall appear at the Case Management Conference, be familiar with the case, and be fully prepared to participate effectively in the hearing, including discussions of ADR options.

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**SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO**

North County  
325 S. Melrose  
Vista, CA 92081

**SHORT TITLE:** R & R Sails, Inc vs. Premier Incentive Group, LLC

**CLERK'S CERTIFICATE OF SERVICE BY MAIL**

**CASE NUMBER:**  
**37-2011-00053159-CU-BT-NC**

I certify that I am not a party to this cause. I certify that a true copy of NOTICE OF HEARING was mailed following standard court practices in a sealed envelope with postage fully prepaid, addressed as indicated below. The certification occurred at Vista, California on 08/09/2011. The mailing occurred at Sacramento on 08/10/2011.

Clerk of the Court, by: J. Castillo, Deputy

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**CLERK'S CERTIFICATE OF SERVICE BY MAIL**

**EXHIBIT 20**  
**PAGE 195**

SUPERIOR COURT OF CALIFORNIA  
SAN DIEGO COUNTY  
325 S. Melrose  
Vista, CA 92081

135  
415.CRT37-20110810.S11

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